

**AUG 18 2005****CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS****NOT FOR PUBLICATION****UNITED STATES COURT OF APPEALS****FOR THE NINTH CIRCUIT**

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

KENNETH EUGENE HOLLOWAY,

Defendant - Appellant.

No. 03-10532

D.C. No. CR-97-40059-CW

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Northern District of California  
Claudia Wilken, District Judge, Presiding

Submitted August 16, 2005<sup>\*\*</sup>

Before: SCHROEDER, Chief Judge, NOONAN and W. FLETCHER, Circuit Judges.

In his first appeal to this court, we set aside Holloway's conviction of robbing a federally-insured credit union, because proof of the federal insurance had not been presented to the jury and consequently vacated his sentence of 35 years

---

<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

imprisonment. At the same time, we affirmed his conviction as a felon in possession of a firearm. We remanded for resentencing. *United States v. Holloway*, 259 F.3d 1199 (9th Cir. 2001) (*Holloway I*).

In his second appeal here, we dismissed a superseding indictment charging him with violations of the Hobbs Act, 18 U.S.C. § 1321, based on the bank robbery. *United States v. Holloway*, 309 F.3d 649 (9th Cir. 2002) (*Holloway II*).

In this third appeal, Holloway again challenges both his conviction and his sentencing as a felon in possession. As to his conviction, he again raises the issue as to the admissibility of his admissions. We did not address this argument in our 2001 opinion but implicitly rejected it as meritless. We see no reason to consider it now. *Thomas v. Bible*, 983 F.2d 152, 154 (9th Cir.), *cert. denied* 508 U.S. 951 (1993).

We **AFFIRM** Holloway's conviction and **REMAND** his sentence to the district court in accordance with *United States v. Booker*, 125 S. Ct. 738 (2005), and *United States v. Ameline*, 409 F.3d 1073 (9th Cir. 2005) (en banc).

**The mandate shall issue forthwith.**